Equality and Human Rights Commission

Minutes of the 93rd meeting of the Board of the EHRC

13th January 2021 (10:00- 13:00)
Via video conference using WebEx

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Attending

Commissioners

Baroness Kishwer Falkner (Chair); Caroline Waters (Deputy Chair); Suzanne Baxter; Jessica Butcher; Pavita Cooper; David Goodhart; Alasdair Henderson; Susan Johnson; Helen Mahy; Lord Bernard Ribeiro; Dr Lesley Sawers (Scotland Commissioner); Su-Mei Thompson

Officers

Ben Coates, Senior Principal - Planning, Performance and Governance (item 11)
Cath Denholm, Executive Director - England and Corporate Improvement and Impact
Melanie Field, Executive Director - Wales and Strategy and Policy
Carla Garnelas, Senior Principle – Strategy Hub (item 12 & 13)
Stephen Lodge, Senior Principal - Enforcement (item 10)
Callum MacInnes, Principal – Corporate Governance
Bill Malloy, Director – Corporate Governance, Finance, Procurement and PEU
Joanna Owen, Principal - Advisory and Litigation (item 10)
Alastair Pringle, Acting Chief Executive
Luke Taylor, Director – Evidence and Strategy Hub (items 12 & 13)
Sarah Whelan, Senior Associate – Corporate Governance
Lucy Cook, Associate – Corporate Governance (Observer)

Guests

Martyn Jones, Interim Chair - EHRC Wales Committee;
Charles Ramsden - Government Equalities Office (GEO)

1. Chair's introduction

1.1 The Chair welcomed attendees. Martyn Jones continued to attend as Interim Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner. Alastair Pringle attended as acting Chief Executive.

2. Apologies for absence

2.1 Mark McLane and Rebecca Hilsenrath sent apologies.

3. Declarations of interest

3.1 Suzanne Baxter declared that she had been appointed to the board of Ascential plc, a FTSE250 data and analytics company, as a Non-Executive Director and audit committee chair, as of 05 January 2021.

3.2 No other declarations were made additional to those already registered.

4. Minutes and correspondence

4.1 The minutes of the 92nd Board meeting, held over two days on the 18 and 19 November 2020, and the Board call of 09 December 2020 (EHRC 93.01; 93.02 and 93.03) were agreed as accurate records.

4.2. The Chair reminded the Board of the following items considered / agreed via correspondence:

4.2.1 On 29 December 2020 the Board agreed to the reappointment of Scotland Committee members Phil Arnold and Bernadette Monaghan, for a further and final two year period from 1 February 2021 until 31 January 2023, and to reappoint Rami Okasha for a further and final three year period from 4 January 2021 until 3 January 2024

4.2.2 On 29 December 2020 the Board agreed to the reappointment of Wales Committee member Mark Sykes for a further and final three year term.

4.2.3 On 30 December 2020 the Board was asked to review the financial report on the impact of coronavirus on the Commission and comment on the implications.

4.2.4 On 6 January 2021 the Board was asked to note the high-level approach to the delivery of Is Britain Fairer (IBF) and the proposed scope of activities of the IBF programme for 2021/22.

5. Actions Arising

5.1 The Board highlighted action 92/8.4 in the action log (EHRC 93.04), regarding the future of Human Rights work, requesting an update when there was further progress. **Action: Sarah Whelan to contact Charlie Hamilton for an update.**

5.2 The Board was content that the remaining actions were complete, progressing satisfactorily, or to be addressed under later agenda items.

6. Updates by exception from Committees / Lead Commissioners

6.1 New Commissioners were invited to express their interest in joining Committees, Commission Working Groups (CWG) and / or to become involved in areas of the business plan, whilst existing members were also asked if they wished to step back from any of their current roles. New Commissioners were invited to observe the next CWG IBF meeting on 16 February. **Action: Corporate Governance Team to log expressions of interest for the Chair. A paper will be brought to the March Board meeting.**

6.2 Commissioners were asked to note that a Board skills survey would shortly be circulated for completion.

6.3 Members were advised that a letter had been issued to the Deputy First Minister informing the Scottish Government of the Commission's decision on the publication of its transgender guidance for schools. The Board would be kept updated on any developments.

7. Chief Executive report

7.1 The Board considered the following issues in respect of the CEO's report (EHRC 93.05):

7.2 **Frequency of Board meetings:** The programme of Board meetings was under review with a view to: putting in place an increased number of shorter meetings from April 2021; introducing a mix of face-to-face and virtual meetings once Covid-19 restrictions allowed; and reducing the number of private Commissioner only sessions. Members would be provided with further information in due course. The Scotland Commissioner asked for the Scotland and Wales Committees to be consulted on the approach.

7.3 **Legal investigations:** Engagement with the Labour Party and BBC continues, whilst also monitoring the progress of the independent investigation into all forms of discrimination, including Islamophobia, commissioned by the Conservative Party.

7.4 **Race inquiry:** Pavita Cooper chaired a webinar on 12 January that encouraged low paid, frontline workers from ethnic minorities in the health and social care sectors to engage with the inquiry's call for evidence. Members were advised that the biggest barrier to receiving evidence from individuals in this sector was that they were exceptionally busy due to the Covid-19 epidemic and did not have the capacity to engage fully. Members agreed that the team should consider other accessible / creative avenues i.e. providing video interviews. **Action: Race inquiry team to consider further.**

7.5 **Commission on Race and Ethnic Disparities (CRED)** – Members expressed concern about the potential overlap of CRED's work with the Commissions. The Chair and Executive reassured members that following discussions with the CRED Chair, Dr Tony Sewell, there was an offer of the two Commissions working closer together and a discussion about whether the Commission (EHRC) needed more powers in this area. The potential benefits of a power to levy fines would be covered in a follow-up letter to Dr Sewell, also drawing his attention to proposals to strengthen the Public Sector Equality Duty. Charles Ramsden, GEO advised that any changes to powers would involve changes to primary legislation, which would likely be difficult to achieve at the current time.

7.6 **Wellbeing and mental health** – Members advised that they were aware that serious issues were emerging in workplaces owing to the impact of homeworking due to Covid-19. Members suggested live pulse data on the impact to Commission employees as a way of keeping track of the situation on a more current basis. **Action: Joe Corcos to consider further.**

8. Performance report

8.1 Members advised that the format continues to improve but also suggested further areas:

8.1.1 Adding a front cover sheet highlighting the areas that had been paused / de-prioritised due to Covid-19 and matters linked to emerging risks that were being discussed at ARAC; and

8.1.2 Reporting how the Commission had responded reactively to current events as well as priority aims.

9. Finance reports

9.1 Members noted the 2020/21 budget allocations and the current financial outturn position with associated risks. Members fed in the following points:

9.1.1 The underspend would need to be explained in the context of Covid-19 impacts (i.e. less travel costs and stakeholder engagement) specifically during a year that a budget cut was received;

9.1.2 Beyond Covid-19, the costings of face-to-face activities needed to be weighed against the advantages of virtual meetings;

9.1.3 Risks associated with litigation costs (from both winning and losing cases) could significantly impact on the budget;
9.1.4 Whilst the Commission could underspend, it could not overspend, as any overspend would lead to the accounts being qualified; and
9.1.5 The need to look at how the Commission managed budgets proactively throughout the year to address underspend issues at Quarter 4.

10. Department of Health and Social Care (DHSC) litigation proposal

10.1 The Chair and Executive updated members on their engagement with the Ministerial Senior Adviser on equality, civil society & constitutional affairs at No.10, which had taken place since the paper (EHRC 93.08) had been drafted. There had also been a request from the Department of Health to meet with the Commission and update the Executive on their progress in the area of health and social care.

10.2 Members noted:

10.2.1 That the timing of this was critical, given it was previously paused due to the Covid-19 epidemic. The epidemic continued and this sector was currently significantly stretched, not least due its role in the roll out of the vaccination scheme;

10.2.2 The Government announcement (13 January) that there would be a major reform of the Mental Health Act and a White Paper and that these could change the direction of the approach and address the areas of concern previously identified by the Commission; and

10.2.3 that the Commission should: review the proposals in the Government's White Paper; speak to other regulators and mental health stakeholders; propose a new approach if necessary and set out a new timeframe for litigation, whilst taking on-board whether it would be an effective use of public money. **Action: The legal team to keep the Board updated as set out at 10.2.3 above.**

11. Spending review

11.1 The Board noted the Spending review papers (EHRC 93.09; 93.09a and 93.09b) and indicated their agreement with the proposed approach.

11.2 Members were further advised that:

11.2.1 Lord Agnew, Minister of State at the Cabinet Office, had been sighted on the budget cuts the Commission had already received over the last few years and the impact this had in terms of meeting its remit;

11.2.2 The Executive team were working on an internal review to respond to the Cabinet Office with savings options by the end of January; working closely with the EHRC Chair and ARAC; and

11.2.3 The Executive team continued to work on the modelling of the organisation depending on the final figure, using the scenario planning

as agreed by the Board at the 90th Board call in August 2020. Members would be provided with an information paper in due course. **Action: Ben Coates to provide Board with an information paper in February.**

12. Business plan

12.1 The Board considered the Business planning papers (EHRC 93.10; 93.10a; 93.10b; 93.10c and 93.10d) and approved the plan on a page summary of Commission's priority activities for 2021/22; the summary of corporate priorities for their inclusion in the externally published annual plan, and the delegation sign off for the full text of the annual plan to the Chair and CEO.

12.2 The Board requested that the Commission look at lessons learnt from activity undertaken in 2020 in shaping plans for next year and for the external annual plan to emphasise the intention for the Commission to make effective use of its enforcement powers. The Executive team provided reassurance that there would continue to be scope for Scotland and Wales to take forward specific work in relation to Transport.

12.3 Members also requested further detail on the Government's tendering process for the public helpline for equality and human rights, ahead of the current contract with G4S expiring in June 2021. Charles Ramsden stated that the intention was for the tender to go out in early February with a view to the contract starting in early July. GEO would continue discussions with the Commission throughout the process.

12.4 Members further requested an update on the gender pay gap enforcement. Charles Ramsden advised that he would seek an update from the Department for Business, Energy & Industrial Strategy.

13. Strategic plan 2022-25

13.1 The Board considered the strategic plan papers (EHRC 93.11; 93.11a; and 93.11b) and agreed the three strategic goals and Core Aim remained relevant but withheld formal approval subject to a further discussion on the strategic challenges and key principles which should underpin the development of the strategic plan. Members flagged the following key questions and issues as relevant to the development of the next strategic plan:

13.1.1 **Serious impact of Covid-19:** on the economy; likelihood of widespread poverty and unemployment and challenges to public finances over the next three years, there is a need to be able to respond to this changing landscape;

13.1.2 **How equality and human rights and the Commission are viewed:** a) The need to be alive to the Government's emerging new positioning

on equality, with a greater emphasis on geography and socio-economic factors; and

b) The Government continues to emphasise the Commission's role as an enforcer and less on advocacy;

13.1.3 **Devolution:** political differences in administrations, increasing devolution and legislative differences point to the need to consider whether a GB approach had to be the only way forward;

13.1.4 **Data and Evidence:** the need to be more impartial; evidence and data driven whilst sensitive to the lived experience of individuals and looking particularly at the language the Commission uses;

13.1.5 **Communications and engagement**:

a) Given the large impact social media is having on the landscape the communications strategy needs to be able to respond quickly and creatively; and

b) Utilise other stakeholders, networks and regulators to do some of the Commission's work;

13.1.6 **Additional areas that need to be considered** include: artificial intelligence; the digital divide; social cohesion; social inequality and polarisation in public discourse.

13.1.7 **Action: Strategy Hub to test the above points (13.2.1-13.2.6) against the three strategic goals, and produce an updated board paper and timeline.**

13.1.8 **Action: Corporate Governance Team and Strategy Hub to organise a Board call in February to allow further discussion.**

14. Any other business

14.1 With no other business being raised, Kishwer Falkner thanked Board members and staff for their contributions, and drew the formal meeting to a close.

14.2 The 94th Board meeting would take place on 11 March 2021.